

SENATE BILL 834

P2

11r2652
CF HB 914

By: **Senator Jones–Rodwell**

Introduced and read first time: February 14, 2011

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Minority Business Enterprise Participation – Application for Certification as**
3 **a Minority Business Enterprise and Termination Extension**

4 FOR the purpose of altering a provision that the Board of Public Works is required to
5 include in certain regulations relating to a certain agency’s notification to an
6 applicant for certification as a minority business enterprise of the agency’s
7 decision within a certain time after receipt of a certain documents; continuing
8 until a certain date certain provisions of the State Procurement Law relating to
9 procurement from minority business enterprises; requiring a certain study and
10 a final report on the study by a certain date; providing for the application of
11 certain provisions of this Act; providing for the effective dates of this Act; and
12 generally relating to minority business enterprise participation.

13 BY repealing and reenacting, with amendments,
14 Article – State Finance and Procurement
15 Section 14–303 and 14–309
16 Annotated Code of Maryland
17 (2009 Replacement Volume and 2010 Supplement)

18 BY repealing and reenacting, with amendments,
19 Chapter 116 of the Acts of the General Assembly of 1995, as amended by
20 Chapters 495 and 496 of the Acts of the General Assembly of 2000,
21 Chapter 339 of the Acts of the General Assembly of 2001, and Chapter
22 359 of the Acts of the General Assembly of 2006
23 Section 2

24 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
25 MARYLAND, That the Laws of Maryland read as follows:

26 **Article – State Finance and Procurement**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 14-303.

2 (a) (1) (i) In accordance with Title 10, Subtitle 1 of the State
3 Government Article, the Board shall adopt regulations consistent with the purposes of
4 this Division II to carry out the requirements of this subtitle.

5 (ii) The Board shall keep a record of the number of waivers
6 requested and the number of waivers granted each year under subsection (b)(8) of this
7 section and submit a copy of the record to the General Assembly on or before October 1
8 of each year, in accordance with § 2-1246 of the State Government Article.

9 (iii) The Board shall keep a record of the aggregate number and
10 the identity of minority business enterprises that receive certification under the
11 process established by the Board under subsection (b)(1) of this section and submit a
12 copy of the record to the General Assembly on or before October 1 of each year, in
13 accordance with § 2-1246 of the State Government Article.

14 (2) The regulations shall establish procedures to be followed by units,
15 prospective contractors, and successful bidders or offerors to maximize notice to, and
16 the opportunity to participate in the procurement process by, a broad range of
17 minority business enterprises.

18 (b) These regulations shall include:

19 (1) provisions:

20 (i) designating one State agency to certify and decertify
21 minority business enterprises for all units through a single process that meets
22 applicable federal requirements, including provisions that promote and facilitate the
23 submission of some or all of the certification application through an electronic process;

24 (ii) for the purpose of certification under this subtitle, that
25 promote and facilitate certification of minority business enterprises that have received
26 certification from the U.S. Small Business Administration or a county that uses a
27 certification process substantially similar to the process established in accordance
28 with item (i) of this item;

29 (iii) requiring the agency designated to certify minority business
30 enterprises to complete the agency's review of an application for certification and
31 notify the applicant of the agency's decision within 90 days of receipt of a [complete
32 application that includes all of the information necessary for the agency to make a
33 decision] **COMPLETED APPLICATION FORM PROVIDED BY THE AGENCY, ALONG
34 WITH ANY REQUIRED SUPPORTING DOCUMENTATION THAT IS LISTED ON THE
35 FORM;** and

1 (iv) authorizing the agency designated to certify minority
2 business enterprises to extend the notification requirement established under item (iii)
3 of this item once, for no more than an additional 60 days, if the agency provides the
4 applicant with a written notice and explanation;

5 (2) a requirement that the solicitation document accompanying each
6 solicitation set forth the expected degree of minority business enterprise participation
7 based, in part, on:

8 (i) the potential subcontract opportunities available in the
9 prime procurement contract; and

10 (ii) the availability of certified minority business enterprises to
11 respond competitively to the potential subcontract opportunities;

12 (3) a requirement that the unit provide a current list of certified
13 minority business enterprises to each prospective contractor;

14 (4) provisions to ensure the uniformity of requests for bids on
15 subcontracts;

16 (5) provisions relating to the timing of requests for bids on
17 subcontracts and of submission of bids on subcontracts;

18 (6) provisions designed to ensure that a fiscal disadvantage to the
19 State does not result from an inadequate response by minority business enterprises to
20 a request for bids;

21 (7) provisions relating to joint ventures, under which a bidder may
22 count toward meeting its minority business enterprise participation goal, the minority
23 business enterprise portion of the joint venture;

24 (8) consistent with § 14–302(a)(6) of this subtitle, provisions relating
25 to any circumstances under which a unit may waive obligations of the contractor
26 relating to minority business enterprise participation;

27 (9) provisions requiring a monthly submission to the unit by minority
28 business enterprises acknowledging all payments received in the preceding 30 days
29 under a contract governed by this subtitle;

30 (10) a requirement that a unit shall verify and maintain data
31 concerning payments received by minority business enterprises, including a
32 requirement that, upon completion of a project, the unit shall compare the total dollar
33 value actually received by minority business enterprises with the amount of contract
34 dollars initially awarded, and an explanation of any discrepancies therein;

1 (11) a requirement that a unit verify that minority business enterprises
2 listed in a successful bid are actually participating to the extent listed in the project
3 for which the bid was submitted;

4 (12) provisions establishing a graduation program based on the
5 financial viability of the minority business enterprise, using annual gross receipts or
6 other economic indicators as may be determined by the Board;

7 (13) a requirement that a bid or proposal based on a solicitation with an
8 expected degree of minority business enterprise participation identify the specific
9 commitment of certified minority business enterprises at the time of submission;

10 (14) provisions promoting and providing for the counting and reporting
11 of certified minority business enterprises as prime contractors; and

12 (15) other provisions that the Board considers necessary or appropriate
13 to encourage participation by minority business enterprises and to protect the
14 integrity of the procurement process.

15 (c) The regulations adopted under this section shall specify that a unit may
16 not allow a business to participate as if it were a certified minority business enterprise
17 if the business's certification is pending.

18 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
19 read as follows:

20 **Article – State Finance and Procurement**

21 14–309.

22 The provisions of §§ 14–301 through 14–305 of this subtitle, and any regulations
23 adopted under those sections, shall be of no effect and may not be enforced after July
24 1, [2011] **2013**.

25 **Chapter 116 of the Acts of 1995, as amended by Chapters 495 and 496 of the**
26 **Acts of 2000, Chapter 339 of the Acts of 2001, and Chapter 359 of the Acts of**
27 **2006**

28 SECTION 2. AND BE IT FURTHER ENACTED, That the Certification Agency,
29 in consultation with the General Assembly and the Office of the Attorney General,
30 shall initiate a study of the Minority Business Enterprise Program to evaluate the
31 Program's continued compliance with the requirements of the Croson decision and any
32 subsequent federal or constitutional requirements. In preparation for the study, the
33 Board of Public Works may adopt regulations authorizing a unit of State government
34 to require bidders and offerors to submit information necessary for the conduct of the
35 study. The Board of Public Works may designate that certain information received in
36 accordance with regulations adopted under this section shall be confidential.

1 Notwithstanding that certain information may be designated by the Board of Public
2 Works as confidential, the certification agency may provide the information to any
3 person that is under contract with the certification agency to assist in conducting the
4 study. The study shall also evaluate race neutral programs and other methods that
5 can be used to address the needs of minority businesses. The final report on the study
6 shall be submitted to the Legislative Policy Committee of the General Assembly prior
7 to September 30, [2010] **2012**, so that the General Assembly may review the report
8 prior to the [2011] **2013** Session.

9 SECTION 3. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall
10 take effect October 1, 2011.

11 SECTION 4. AND BE IT FURTHER ENACTED, That, except as provided in
12 Section 3 of this Act, this Act shall take effect July 1, 2011.